

USDC SCAN INDEX SHEET



BAR 7/22/99 15:54

3:99-CV-01504 BIRKNER V. HANDLERY HOTELS INC

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CMP.

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5 Attorney for Plaintiff, KLAUDIA BIRKNER

JUL 19 1999
[Handwritten Signature]

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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 KLAUDIA BIRKNER,
12 Plaintiff,

13 v.

14 HANDLERY HOTELS, INC., a)
California corporation and DOES 1)
15 through 10, inclusive
16 Defendants

) Case No. **'99 cv 1504H LAB**
) **Civil Rights**
) **COMPLAINT FOR DAMAGES AND**
) **INJUNCTIVE RELIEF FOR VIOLATIONS**
) **OF: AMERICANS WITH DISABILITIES**
) **ACT OF 1990; UNRUH CIVIL RIGHTS**
) **ACT; CALIFORNIA'S DISABLED PERSON**
) **ACT; COMMON LAW UNFAIR**
) **COMPETITION; NEGLIGENCE;**
) **NEGLIGENCE PER SE; CALIFORNIA'S**
) **UNFAIR BUSINESS PRACTICE ACT;**
) **DECLARATORY RELIEF;**
) **DEMAND FOR JURY**

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18
19 Plaintiff KLAUDIA BIRKNER complains of HANDLERY HOTELS, INC.
20 and DOES 1 through 10, inclusive, and alleges as follows:

21 **INTRODUCTION:**

22 1. This is a Civil Rights action for discrimination against
23 persons with physical disabilities, of which Plaintiff is a member
24 of said class, for failure to remove architectural barriers
25 structural in nature at Defendants' HANDLERY HOTEL located at 950
26 Hotel Circle, San Diego, California, a place of public
27 accommodation, thereby discriminatorily denying Plaintiff and the
28

1 class of other similarly situated persons with physical disabilities
2 access to, the full and equal enjoyment of, opportunity to
3 participate in, and benefit from, the goods, facilities, services,
4 and accommodations thereof.

5 **2.** Plaintiff seeks injunctive relief and damages for
6 violations of civil rights and for damages flowing from such
7 violations.

8 **JURISDICTION AND VENUE:**

9 **3. Jurisdiction:** This Court has jurisdiction of this action
10 pursuant to 28 U.S.C. § 1331 for violations of the Americans with
11 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. Pursuant to
12 supplemental jurisdiction, attendant and related causes of action,
13 arising from the same nucleus of operative facts and arising out of
14 the same transactions, are also brought under California state law.

15 **4. Venue:** Venue is proper in this court pursuant to 28
16 U.S.C. § 1391(b) and is founded on the fact that the improved real
17 property which is the subject of this action is located in this
18 district and that Plaintiff's causes of action arose in this
19 district.

20 **PARTIES:**

21 **5.** Plaintiff KLAUDIA BIRKNER is a California resident with
22 physical disabilities who uses a wheelchair to travel about in
23 public.

24 **6.** Defendants HANDLERY HOTELS, INC. and DOES 1 through 10,
25 inclusive (hereinafter alternatively referred to collectively as
26 "Defendants"), are the owners and operators, lessors and/or lessees,
27 or agents of the owners, lessors and/or lessees, and/or alter egos,
28 franchisers and/or franchisees, of the building and/or buildings

1 which constitute a public facility in and of itself, occupied by the
2 above described hotel, public accommodations, and subject to the
3 requirements of federal and state law requiring full and equal
4 access to public accommodations and facilities.

5 7. Plaintiff KLAUDIA BIRKNER does not know the true names of
6 Defendants HANDLERY HOTELS, INC. and DOES 1 through 10, inclusive,
7 their business capacities, their ownership connection to the
8 property and business, or their relative responsibilities in causing
9 the access violations herein complained of, and alleges a joint
10 venture and common enterprise by all such Defendants. Plaintiff is
11 informed and believes that each of the Defendants herein, including
12 DOES 1 through 10, inclusive, is responsible in some capacity for
13 the events herein alleged, or is a necessary party for obtaining
14 appropriate relief. Plaintiff KLAUDIA BIRKNER will seek leave to
15 amend when the true names, capacities, connections, and
16 responsibilities of the Defendants HANDLERY HOTELS, INC. and DOES 1
17 through 10, inclusive, are ascertained.

18 **PRELIMINARY FACTUAL ALLEGATIONS:**

19 8. Defendants are the owners and operators of the hotel and
20 convention center, located at 950 Hotel Circle, San Diego,
21 California. The hotel, its public toilet facilities, public
22 lavatory facilities, and its other facilities are each a "public
23 accommodation or facility" subject to the requirements of state and
24 federal law. On information and belief, each such facility has,
25 since July 1, 1970, undergone "alterations, structural repairs and
26 additions," each of which has subjected the public accommodations,
27 and each of their facilities to handicapped access requirements per
28 the Americans with Disabilities Act Access Guidelines (ADAAG) and

1 Title 24 of California's Code of Regulations.

2 **9.** In or about May 1999, Plaintiff KLAUDIA BIRKNER was an
3 invitee and customer at the subject hotel.

4 **10.** In May 1999 the subject hotel/convention center, lacked
5 required disabled accessible public restrooms and had signage
6 indicating a restroom was accessible when it was inaccessible to
7 Plaintiff and others similarly situated with physical disabilities.
8 Said lack of required disabled accessible restrooms and misleading
9 signage cause severe Plaintiff to suffer sever bodily injury.

10 **11.** On information and belief, other public facilities were
11 improperly inaccessible for use by persons with physical
12 disabilities.

13 **12.** On information and belief, the facilities continue to the
14 date of filing this complaint to deny equal access to Plaintiff and
15 other persons with physical disabilities.

16 **13.** As a result of the inaccessible facilities, Plaintiff
17 KLAUDIA BIRKNER was humiliated, embarrassed and frustrated,
18 suffering emotional injuries. Moreover, as a result of the
19 inaccessible facilities, Plaintiff KLAUDIA BIRKNER suffered bodily
20 and physical injury.

21 **14.** Plaintiff would like to return and use the Defendants'
22 public accommodations but because of Defendants' violations,
23 Plaintiff and other persons with physical disabilities are unable to
24 use public facilities such as those owned and operated by Defendants
25 on a "full and equal" basis unless such facility is in compliance
26 with the provisions of the Americans with Disabilities Act and other
27 accessibility law as pled herein. Plaintiff has, therefore, been
28 deterred from returning and using the Defendants' public

1 accommodations.

2 **15.** Plaintiff KLAUDIA BIRKNER is informed and believes and
3 therefore alleges that Defendants and each of them (1) caused the
4 subject improved real properties which constitute the subject
5 HANDLERY HOTEL to be constructed, altered and maintained in such a
6 manner that persons with physical disabilities were denied full and
7 equal access to, within and throughout said improved real
8 property(s); (2) that the Defendants have had actual and
9 constructive notice that the facilities were not legally accessible
10 to persons with disabilities; (3) that despite being informed of
11 such effect on Plaintiff and other persons with physical
12 disabilities due to the lack of accessible facilities, Defendants,
13 and each of them, knowingly and willfully refused to take any steps
14 to rectify the situation and to provide full and equal access for
15 Plaintiff and other persons with physical disabilities to the
16 subject HANDLERY HOTEL. Said defendants, and each of them, have
17 continued such practices, in conscious disregard for the rights and
18 safety of Plaintiff and other persons with physical disabilities.
19 Said conduct, with knowledge of the effect it was and is having on
20 Plaintiff and other persons with physical disabilities, constitutes
21 despicable conduct in conscious disregard of the rights and safety
22 of Plaintiff and of other similarly situated persons, justifying the
23 imposition of punitive and exemplary damages per Civil Code section
24 3294.

25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**
26 **DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against**
All Defendants (42 U.S.C. section 12101, et seq.)

27 **16.** As persons who own and operate a place of public
28 accommodation, the Defendants are required to (1) ensure that all

1 construction, alteration, or modification is barrier free and
2 complies with the ADAAG; and (2) remove all existing barriers where
3 such removal is "readily achievable." As alleged above, there are
4 architectural barriers existing on the Defendants' facilities, which
5 barriers are in violation of the Americans with Disabilities Act
6 Accessibility Guidelines, are readily achievable removed, and are
7 unlawful. The Defendants have failed to comply with the ADA and,
8 therefore, discriminated against the Plaintiff.

9 **17.** Further, if it were not "readily achievable" for
10 Defendants to remove each of such barriers, Defendants have failed
11 to make the required services available through alternative methods,
12 that were readily achievable.

13 **18.** Plaintiff would like to return and use the Defendants'
14 facilities but Plaintiff cannot return to or make use of the public
15 facilities complained of herein so long as the premises and
16 Defendants' policies bar full and equal use by persons with physical
17 disabilities.

18 **19.** Wherefore, Plaintiff prays for relief as hereinafter
19 stated.

20 **II. SECOND CAUSE OF ACTION VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**
21 (On behalf of Plaintiff and Against All Defendants) (Cal Civ §
22 51 et seq.)

23 **20.** Plaintiff repleads and incorporates by reference, as if
24 fully set forth again herein, the allegations contained in all prior
25 paragraphs of this complaint.

26 **Count One:**

27 **21.** The Defendants have not ensured that their facilities
28 comply with Title 24 of the California Code of Regulations, the
California Building Code as it applies to physical access for

persons with disabilities and failed to ensure that disabled persons have "full and equal accommodations, advantages, facilities, privileges, or services" to the facilities identified above.

Count Two:

22. The Defendants have not complied with the Americans with Disabilities Act of 1990.

III. THIRD CAUSE OF ACTION VIOLATION OF CALIFORNIA'S DISABLED PERSONS ACT, (On Behalf of Plaintiff and Against All Defendants) (California Civil Code § 54 et seq.)

23. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint and incorporates them herein as if separately repled.

Count One:

24. The Defendants have not ensured that their facilities comply with Title 24 of the California Code of Regulations, the California Building Code as it applies to physical access for persons with disabilities and have failed to ensure that disabled persons have full and equal access to public accommodations and/or other places that the general public is invited and that disabled persons enjoy the same accommodations, advantages, facilities, and privileges to the facilities identified above.

Count Two:

25. The Defendants have not complied with the Americans with Disabilities Act of 1990.

26. Wherefore, Plaintiff prays for relief and damages as hereinafter stated.

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1 **IV. FOURTH CAUSE OF ACTION VIOLATION OF COMMON LAW UNFAIR**
2 **COMPETITION (On Behalf of Plaintiff and Against All**
3 **Defendants)**

4 **27.** Plaintiff repleads and incorporates by reference, as if
5 fully set forth again herein, the allegations contained in all prior
6 paragraphs of this complaint.

7 **28.** Defendants advertise to the public by various means,
8 including but not limited to, their on-site signage that the
9 facilities are open to and accessible by the general public. No
10 signage is posted indicating that the facilities are restricted only
11 to fully-ambulatory persons or that persons with disabilities are
12 not welcome or will have problems with physical accessibility.

13 **29.** Persons with disabilities are invited just as the general
14 public but the invitation, as delivered by the Defendants'
15 advertising, is deceptive, defective, and damaging. Persons with
16 disabilities attempt to access the Defendants' facilities at their
17 own peril.

18 **30.** Plaintiff has been damaged by the Defendants' advertising
19 activities.

20 **31.** Wherefore, Plaintiff prays for relief and damages and
21 relief as hereinafter stated.

22 **V. FIFTH CAUSE OF ACTION: NEGLIGENCE**
23 **(On behalf of the Public and Against All Defendants)**

24 **32.** Plaintiff repleads and incorporates by reference, as if
25 fully set forth again herein, the allegations contained in all prior
26 paragraphs of this complaint.

27 **33.** Defendants had a duty to exercise ordinary care.

28 **34.** Defendants failed to exercise ordinary care.

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1 **35.** As the actual and proximate result of Defendants' failure
2 to exercise ordinary care, Plaintiff suffered damages in an amount
3 to be determined by proof.

4 **36.** Wherefore, Plaintiff prays for relief and damages and
5 relief as hereinafter stated.

6 **VI. SIXTH CAUSE OF ACTION: NEGLIGENCE PER SE**
7 (On behalf of the Public and Against All Defendants)

8 **37.** Plaintiff repleads and incorporates by reference, as if
9 fully set forth again herein, the allegations contained in all prior
10 paragraphs of this complaint.

11 **38.** At all times relevant hereto, there was in effect the
12 Americans with Disabilities Act; the Unruh Civil Rights Act,
13 California's Disabled Person Act, Title 24 of the California Code of
14 Regulations; and California Health and Safety Code, sections 19955
15 et seq., all of which require that public accommodations and
16 facilities provide services to people with physical disabilities
17 which are equal to, and are not inferior to, the services provided
18 patrons who are not physically disabled.

19 **39.** Plaintiff is a member of class which these statutes are
20 designed to protect.

21 **40.** Defendants' acts and omissions alleged herein are a
22 violation of statutory requirements and, therefore, constitute
23 negligence per se.

24 **41.** As a result of the actions taken by Defendants, the
25 Plaintiff has suffered the harm which these statutes are designed to
26 prevent.

27 **42.** Wherefore, Plaintiff prays for relief and damages and
28 relief as hereinafter stated.

1 **VII. SEVENTH CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S UNFAIR**
2 BUSINESS PRACTICES ACT (On behalf of the Public and Against All
Defendants) (Cal. Bus. & Prof. § 17200 et seq.)

3 **43.** Plaintiff repleads and incorporates by reference, as if
4 fully set forth again herein, the allegations contained in all prior
5 paragraphs of this complaint.

6 **44.** In addition to the access violations described above,
7 Defendants' facilities are in violation of California and Federal
8 law in that they do not provide required access for disabled
9 persons.

10 **45.** Defendants' acts and omissions alleged herein are a
11 violation of both statutory requirements and public policy and,
12 therefore, constitute a violation of Business and Professions Code
13 sections 17200 et seq.

14 **46.** Plaintiff, on behalf of herself and the general public,
15 seeks injunctive relief requiring Defendants to remedy the
16 disability access violations present at their facilities. Ancillary
17 to this injunctive relief, Plaintiff also requests restitution for
18 any amounts received by the Defendants from additional business they
19 received as a result of not complying with the disability access
20 laws.

21 **47.** Wherefore, Plaintiff prays for relief and damages and
22 relief as hereinafter stated.

23 **VIII. EIGHTH CAUSE OF ACTION DECLARATORY RELIEF**

24 **48.** Plaintiff repleads and incorporates by reference, as if
25 fully set forth again herein, the allegations contained in all prior
26 paragraphs of this complaint.

27 **49.** A judicial declaration is necessary and appropriate at
28 this time in order that each of the parties may know their

1 respective rights and duties and act accordingly.

2 **50.** Plaintiff contends that the facilities identified above
3 fail to comply with applicable laws prohibiting discrimination
4 against persons with disabilities and is in violation of statutes
5 including, but not limited to, the Americans with Disabilities Act
6 of 1990; the Unruh Civil Rights Act, and California's Disabled
7 Person Act.

8
9 **PRAYER:**

10 Wherefore, Plaintiff prays that this court award damages and
11 provide relief as follows:

12 **1.** For injunctive relief, compelling Defendants to comply with
13 the Americans with Disabilities Act of 1990, the Unruh Civil Rights
14 Act; and California's Disabled Person Act, which order will include
15 the removal of barriers and the implementation of reasonable
16 modifications in policies, practice, eligibility criteria and
17 procedures so as to afford full access to the goods, services,
18 facilities, privileges, advantages and accommodations being offered.

19 **2.** A declaration that the facilities are designed and operated
20 in a manner that discriminates against persons with physical
21 disabilities and that fails to provide full and equal access for
22 persons with disabilities as required by law;

23 **3.** General and Special damages in an amount to be determined by
24 proof;

25 **4.** Treble damages pursuant to Cal. Civ. Code § 52 and 54.3;

26 **5.** Restitution;

27 **6.** Punitive Damages;

28 **7.** Reasonable attorneys' fees, litigation expenses and costs of

1 suit;

2 8. For such other and further relief as the court may deem
3 proper.

4
5 Dated: June 26, 1999

CENTER FOR DISABILITY ACCESS, LLP

6
7 By: 

MARK D. POTTER

8 RUSSELL C. HANDY

9 Attorneys for Plaintiff

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury for all claims for which a jury
12 is permitted.

13
14 Dated: June 26, 1999

CENTER FOR DISABILITY ACCESS, LLP

15
16 By: 

17 MARK D. POTTER

18 RUSSELL C. HANDY

19 Attorneys for Plaintiff
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CIVIL COVER SHEET '99 cv 1504 H-LAB

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

KLAUDIA BIRKNER

DEFENDANTS

HANDLERY HOTELS, INC., a California corporation
and DOES 1 through 10, inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Alameda
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

MARK D. POTTER, ESQ. (Bar # 166317 (619) 232-4982
CENTER FOR DISABILITY ACCESS, LL
2535 Kettner Blvd., Suite 2A5
San Diego, California 92101

ATTORNEYS (IF KNOWN)

FILED

JUL 20 1999

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- Citizen of This State ☐ 1 ☐ 2 Incorporated or Principal Place of Business in This State
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened
Transferred from another district (specify) ☐ 5 ☐ 6 Multidistrict Litigation
Appeal to District Judge from Magistrate Judgment ☐ 7

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 1 57 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC/ Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 881 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Title III of Americans with Disabilities Act. 42 U.S.C.A. Section 12101, et. seq.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions):

JUDGE

DOCKET NUMBER

IF ANY

SIGNATURE OF ATTORNEY OF RECORD

DATE
July 14, 1999

FOR OFFICE USE ONLY

RECEIPT # 051175 AMOUNT 150 APPLYING IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For plaintiff and defendant, enter the county where the first listed plaintiff or defendant resides at the time of filing. In U.S. District Court cases, enter the name of the county where the first listed plaintiff or defendant resides at the time of filing. (NOTE: In land condemnation cases, enter the name of the county where the tract of land involved is located.)

(c) Attorneys. Enter the names of all attorneys for plaintiff and defendant, noting in this section "by" or "for" as appropriate.

II. Jurisdiction. The basis of jurisdiction. Place an "X" in one of the boxes. If there is more than one basis, place an "X" in each box.

United States plaintiff. (1) Jurisdiction based on the Constitution or laws of the United States.

United States defendant. (2) When the defendant is a United States officer or employee, the action is based on the Constitution or laws of the United States.

Federal question. (3) This refers to a claim or defense that arises under the Constitution, an act of Congress, or a regulation of an executive department or independent agency, where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, a claim or defense that arises under the Constitution, an act of Congress, or a regulation of an executive department or independent agency, where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, a claim or defense that arises under the Constitution, an act of Congress, or a regulation of an executive department or independent agency, where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence.

Diversity of citizenship. (4) This refers to a claim or defense that arises under the Constitution, an act of Congress, or a regulation of an executive department or independent agency, where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, a claim or defense that arises under the Constitution, an act of Congress, or a regulation of an executive department or independent agency, where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence.

III. Residence (citizenship) of Principal Parties. Mark this section for each principal party. Place an "X" in the appropriate box.

IV. Origin. Place an "X" in one of the boxes.

Original Proceedings. (1) Cases which arise in the District Court.

Removed from State Court. (2) Proceedings removed from state court. When the petition for removal is granted, the filing date is the date of removal.

Remanded from Appellate Court. (3) Proceedings remanded from appellate court. When the petition for remand is granted, the filing date is the date of remand.

Reinstated or Reopened. (4) Check this box if the case has been reinstated or reopened.

Transferred from Another District. (5) Check this box if the case has been transferred from another district. Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box if the case is part of a multidistrict litigation. When this box is checked, do not check any other box in this section.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

time of the county where the first listed plaintiff or defendant resides at the time of filing. (NOTE: In land condemnation cases, enter the name of the county where the tract of land involved is located.)

. If there are several attorneys, list them on an attachment, noting in this section "by" or "for" as appropriate.

that jurisdictions be shown in pleadings. Place an "X" in each box.

officers of the United States are included here.

Place an "X" in this box.

Under the Constitution of the United States, an act of Congress, or a regulation of an executive department or independent agency, where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence.

of different states. When Box 4 is checked, the U.S. plaintiff or defendant code takes precedence over diversity cases.)

if diversity of citizenship was indicated above.

in courts under Title 28 U.S.C., Section 1441.

further action. Use the date of remand as the filing date.

Use the reopening date as the filing date.

. Do not use this for within district transfers or multidistrict litigation transfers.

Under authority of Title 28 U.S.C. Section 1407.